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**PAROL EVIDENCE TO SUPPLEMENT DESCRIPTIONS OF
REAL ESTATE IN WRITINGS, ESPECIALLY IN
CONTRACTS FOR SALE.**

As contracts for the sale of real estate are frequently drawn by laymen and abbreviated descriptions of the subject-matter indeterminable without parol evidence are by no means rare, it is important to ascertain to what extent parol testimony is admissible in the case of an ambiguous description in a contract required by the Statute of Frauds to be in writing.

While a superficial observer might take the view that the Statute of Frauds requires certain contracts to be in writing and that therefore parol evidence is inadmissible to supplement an ambiguous description in such a case, yet more careful thought produces contrary convictions. For both a deed and a will are required by law to be in writing and in both instances parol evidence is admissible to supplement the description, if ambiguous. By equal reasoning such evidence would be admissible in like instances in cases of contracts covered by the Statute of Frauds. Accordingly we find the law stated by an eminent writer on the Statute of Frauds as follows:

For most purposes, it may be said that the statute has neither added to, nor taken from, the stringency of these rules. At common law such evidence is not admissible to contradict or vary a written agreement by showing what passed before or at the time of its execution, between the parties; a rule which prevails as well in equity, wherever such evidence is offered to sustain the plaintiff's suit, as in actions at law. And this is so, *a fortiori*, in relation to any contract which the statute requires to be put in writing. On the other hand, parol evidence is admitted at common law to show the circumstances under which the parties have executed a written agreement, with a view to fix its application to the subject-matter which they had in their minds. And for this purpose, as we have seen in various places in the present chapter, it is equally admissible, although the agreement be one which cannot, consistently with the statute, be made without writing. Again, it is a familiar principle of equity, when the court is called upon to decree the specific execution of a written agreement, that the defendant may by parol evidence prove that by

fraud, mistake, or surprise, the writing failed to show the real agreement entered into by the parties. And the Statute of Frauds does not interdict such evidence in such cases. To use the language of Lord Redesdale, "the statute does not say that if a written agreement is signed the same exception shall not hold to it that did before the statute." "It does not say that a written agreement shall bind, but that an unwritten agreement shall not bind." (Browne on Frauds, p. 428, § 409a.)

And in the *Encyclopædia of Evidence*, Vol. 12, pages 15, 16, it is said:

H. Explanation and Scope.—Parol evidence is competent to apply the contract to the parties, as to show that one of the signers acted as agent for the plaintiff or the defendant, and to identify one of the parties named in the memorandum.

I. Proof of Circumstances or Making.—The circumstances attending the making of a contract may be proven for the purpose of aiding in its application and construction; and oral evidence is competent to show that the writing, either because of fraud, mistake, or surprise, does not embody the contract made. Contracts governed by the Statute of Frauds, like other contracts, are to be read by the light of surrounding circumstances; hence parol evidence is admissible to show the situation and relation of the parties and such circumstances.

J. Ambiguities May be Removed.—Parol evidence may be received to remove ambiguities in the contract, as to show the names of the parties, which was the buyer and which the seller, and to prove that an itemized bill of the goods purchased was sent to the buyer. It is also received to show that trade abbreviations have a recognized meaning and to inform concerning them, and to apply the contract and its covenants to the subject-matter thereof.

K. Cannot Be Shown by Parol.—The writings must contain all that is necessary to form a contract; defects or omissions therein cannot be supplied by verbal testimony. If the memorandum is executed and delivered as a complete writing and is capable of a clear and intelligible exposition, parol evidence is not admissible to contradict or vary its terms or construction.

Though the contract recites that it is partial, such evidence is not admissible to vary its terms in so far as they are complete.

L. Not to be Varied by Parol.—The substance of the contract must be ascertained from the memorandum without recourse to parol proof; *but no other rule prevails in this respect as to contracts within the statute that is applicable to written agreements in general.* If a deed purports to convey the house and lot on which A now lives, it may be shown by parol what property that description fitted when the language was used. Personal property may be identified by extrinsic evidence if the memorandum refers thereto.

And in 20th Cyc., p. 317, it is said:

Parol Evidence—a. To Aid Memorandum—(1) General Rules.—If the memorandum offered in support of the contract is insufficient under the statute, oral evidence cannot ordinarily be given to supply the deficiency; nor can agreements themselves within the statute be added to the memorandum by oral testimony. However, these rules do not prevent the admission of oral evidence to show the circumstances under which the contract was made, to explain technical terms of the memorandum, or to show to what subject-matter or to what parties it applies.

ALL DESCRIPTIONS NECESSARILY INCOMPLETE AND DEPENDING UPON EXTRINSIC EVIDENCE TO SOME EXTENT.

The truth of the matter is that all knowledge is relative and descriptions of real estate are no exceptions to this rule. We do not need Herbert Spencer's First Principles to assure us of this fact. Not unfrequently the Courts have emphasized it. Even the most careful description of real property must be supplemented by extrinsic evidence of some sort. It is never complete in itself. It merely furnishes data from which, by the aid of extrinsic evidence, the surveyor, by the additional aid of his instruments, may locate the property. Take this perfect description for instance:

Situate in Norfolk, Virginia, beginning at the Northeast corner of A. and B. Streets, etc.

This description requires knowledge, first, as to where A. and B. Streets can be found, secondly, as to where the exact corner

in question is located, and to ascertain with precision the corners of suburban streets is often a matter requiring considerable investigation, and sometimes impossible to be accurately determined.

Take this description which is adequate and often used:

Situate in Norfolk, Virginia, commencing on the north side of Main Street at the Northeast corner of John Brown's lot, etc.

Even if the Court takes judicial notice of the location of Main Street, still the northeast corner of John Brown's lot must be ascertained by considerable investigation, including possibly a survey, an examination of the title, and an investigation of the physical boundaries with reference to adverse possession.

In *Hardaway v. Jones*, 100 Va. 481, the Court said:

"It seems to be equally well settled that it is not necessary, in fact, in many cases it is impossible, to so describe the property that it can be identified by the words or names used in the deed by its mere inspection, without the aid of extrinsic evidence.

"It is, therefore, permissible, and in most cases necessary, to resort to parol evidence to identify the property mentioned in the deed, even where it has been minutely described."

IMPORTANT DISTINCTION TO BE OBSERVED.

In Virginia there is no case passing on a contract covered by the Statute of Frauds deciding in this regard how far extrinsic evidence is admissible in such a case and we are forced to accept as authority the cases decided in reference to deeds, which, as above shown, stand on the same basis as contracts in this regard, but while the general rules as to the admission of extrinsic evidence apply to contracts governed by the Statute of Frauds, yet a distinction is to be observed between cases concerning the original parties and cases where the rights of third parties have intervened. As between the original parties to the deed or contract far greater liberality in the introduction of parol evidence of the circumstances surrounding it is permitted than is allowed in a case of strangers who are necessarily unfamiliar with these circumstances.

In the above cited case of *Hardaway v. Jones*, 100 Va. 481, Judge Buchanan, in delivering the opinion of the Court, laid down

the following rule with reference to the description of property as far as the rights of third persons are concerned:

"The general rule upon this subject as stated by the text writers, and which seems to be sustained by the weight of decided cases, is, that a deed of trust or mortgage conveying chattels, when recorded, is constructive notice to third persons, if the description in the deed or mortgage is such as will enable them to identify the property, aided by the inquiries which the deed or mortgage itself indicates and directs. Jones on Mortgages, § 238. See note to Barrett *v.* Fisch, 14 Am. St. Rep. 238, 239, and cases cited."

This rule (which is the same as that laid down in regard to real estate in the case of Florence *v.* Morien, 98 Va. 26) is stated by the Court to be subject to a qualification as far as the immediate parties to the transaction are concerned. The Court in said case states the qualification as follows:

"It seems to be well settled that a description in a chattel mortgage or deed of trust, may be sufficient as between the immediate parties to which would not be sufficient as against creditors or purchasers from the grantor in the deed."

In the same case the Court cites with approval Barrett *v.* Fisch, 14 Am. St. Rep. 238, where in the note the law is stated thus:

"As was said in the beginning, a description which is sufficient between the parties to the mortgage may be utterly insufficient as against third persons; *for, as between the parties, a specific and particular description is not necessary, and the mortgaged articles may be shown by parol evidence*, while the mortgage, to be effectual as against third persons, must point out the subject-matter of it, so that such persons by it, together with such inquiries as the instrument suggests, may be able to identify the property intended to be covered."

In Sulphur Mines Co. *v.* Thompson, 93 Va. 308, 25 S. E. 232, the Court held:

"Extrinsic evidence was admissible to ascertain the location of the adjoining lands called for, so as to apply the deed to its proper subject-matter. If, with the aid of such evidence, the land could not be identified, then the plaintiffs must fail in their

action; but the deed upon its face, is not so defective in the description of the land as that the court could pronounce it ambiguous or uncertain, and exclude it from the jury. No court is at liberty to pronounce an instrument ambiguous or uncertain until it has brought to aid in its interpretation all the lights afforded by collateral facts and circumstances which are properly provable by parol. 1 Greenleaf on Ev., §§ 298 and 300. The court properly admitted the deed in evidence."

Also in Lennig's Executors *v.* White, 20 S. E. 831, 836, the Supreme Court of Appeals of this State held that the description of property by name is adequate without metes and bounds, where the premises are well known by the name used. This last decision is in accordance with Coleman *v.* Manhattan Improvement Co., 94 N. Y. 229, holding that Pelican Beach near Barren Island is an adequate description, also in accordance with Eufala National Bank *v.* Pruitt, 30 So. 731, sustaining the sufficiency of "tract of land known as Pruitt Place near Batesville, Ala."

In George *v.* Bates, 90 Va. 839, 20 S. E. 828, the Supreme Court of Appeals of Virginia held:

That the description "a piece of land near Beacon Quarter Branch" was insufficient, but the controversy was not between the original parties.

Passing from the decisions of this State in reference to descriptions in deeds and taking the decisions of other States and the opinions of approved text writers, we find that the utmost liberality is accorded by the weight of authority in reference to the admissibility of parol evidence with regard to descriptions in contracts for the sale of real estate. Thus in Am. & Eng. Enc., vol. 29, 867, the following is stated as the rule in regard to the admission of such evidence:

"If the designation is so definite that the purchaser knows exactly what he is buying and the seller knows what he is selling and the land is so described that the Court can, with the aid of extrinsic evidence, apply the description to the exact property intended to be sold, it is enough. And in Pomeroy on Contracts, the learned writer says:

"The subject-matter of the agreement must all be included in the memorandum, and must be described with sufficient exactness

to render its identity certain upon the introduction of extrinsic evidence, simply disclosing the situation of the parties at, and immediately before, the time of making the contract. Parol evidence is admissible to show the surrounding circumstances and position of the parties, and thus to explain the meaning and application of the descriptive language, and thereby to identify the subject-matter.' Section 90. 'While the description need not be so minute and exhaustive that the individual thing which constitutes the subject-matter will be fully known from a mere reading or recital of the language, yet it must be so definite as to show what the purchaser supposed he was contracting for, and what the vendor intended to sell, and as to enable the court to ascertain what it is by the aid of proper evidence. From the nature of the case, it is almost impossible that a description should be so perfect as to dispense with all resort to evidence. * * * The description must be sufficient to render the identity clear upon the introduction of such evidence.' Section 152. 'The rule is the same as that which regulates the admission of parol evidence to identify persons and things in wills or deeds.' *Id.*, note 1. And in *Fry on Specific Performance* thus: 'Every valid contract must contain a description of the subject-matter, but it is not necessary that it should be so described as to admit of no doubt what it is, for the identity of the actual thing and the thing described may be shown by extrinsic evidence. This flows from the very necessity of the case, for all actual things being outside of and beyond the agreement, the connection between the words expressing the agreement and things outside it must be established by something other than the agreement itself; that is, by extrinsic evidence. The same rule is admitted, and from the like necessity, with regard both to persons and things mentioned in wills; and, in the cases of agreements within both the fourth and seventeenth sections of the statute of frauds, parol evidence as to identity is admissible.' Section 209. To the same effect is the rule as stated in *Browne on the Statute of Frauds*, Par. 385.

It is said that the decisions of the Supreme Court of West Virginia, of the Supreme Court of the United States and of the Supreme Court of Massachusetts are more frequently cited in this State than others and have a controlling influence. Com-

mencing with the first; we find that in *White v. Core*, 20 W. Va. 272, the Court of Appeals of West Virginia held:

That the description "lower half of land purchased from Core" was adequate in a contract for the sale of real estate and could be supplemented by parol evidence. The Court says:

This is sufficiently certain to describe and identify the land, provided the parol testimony which connects the land mentioned in the agreement with the land described in the deed from Core to White is competent. It is a well settled principle of law that the Court may go outside of the writing for the purpose of ascertaining and identifying the subject-matter, and a contract to sell "my farm" or "mill" is sufficiently certain if it appears that the vendor has but one such building or tract of land. The Court cited *Fish v. Hubard*, 21 Wen. 652; *Barry v. Comb*, 1 Peters 640; *Roberson v. Hornbaker*, 2 Green 60; *Warren v. Syme*, 7 W. Va. 474, 487.

The Supreme Court of the United States, in the case of *Barry v. Combs*, 1 Peters 640, passed on the question of the admissibility of parol evidence to supplement a description in the contract for the sale of real estate. The description used was "your one-half Eastern Branch wharf and premises." The Court held that it was permissible to explain what was meant by this very indefinite expression.

The Supreme Court of Massachusetts has passed upon this question in several cases. In *Hurley v. Brown*, 98 Mass. 545, the Court held:

"In a written contract to convey real estate, the words used to describe the estate agreed to be conveyed are presumed to relate to estate owned at the time of the contract by the party agreeing to make the conveyance; and if the agreement is to convey 'a' house and lot of land on a certain street, and, in a suit in equity to compel specific performance thereof, it appears that there are several lots of land, with houses, on that street, oral evidence is admissible to apply this description to a particular house and lot of land so situated, and so owned." (Sylabus.)

"This is a bill in equity for the specific performance of a contract made by a husband and wife to convey her separate property. * * * It is conceded to be in legal effect a contract to

convey 'a house and lot of land situated on Amity Street, Lynn, Mass.,' and the question is whether such a description is void for such an uncertainty. * * * We think that the presumption is strong that a description which actually corresponds with an estate owned by the contracting party is intended to apply to that particular estate, although couched in such general terms as to agree equally well with another estate which he does not own. This would be apparent if the memorandum related to personal property. For example, if a man made a written bargain to sell 'a horse,' and he then owned one horse only, we suppose that no one would doubt that the contract was to be construed to relate to that particular animal. This court has decreed specific performance of an agreement to convey 'fifty shares of Providence & Worcester Railroad stock,' a description which does not identify any specific shares. *Todd v. Taft*, 7 Allen 371. No more particular description is necessary under the statute of frauds, in a contract for the sale of real estate, than in one relating to personal property. In each, to constitute a bargain and sale, or a contract which will be specifically enforced in equity, the subject-matter thereof must be identified.

"In a deed, the words of description are, of course, intended to relate to an estate owned by the grantor. And, in our opinion, this is also the presumption in construing a contract for a future conveyance. If the party who enters into the agreement in fact owns a parcel answering to the description, and only one such, that must be regarded as the one to which the description refers. With the aid of this presumption, the words, 'a house and lot' on a street where the party who uses the language owns only one estate, are as definite and precise as the words 'my house and lot' would be; a description the sufficiency of which has been placed beyond all doubt by very numerous authorities. *Bird v. Richardson*, 9 Pick. 252. *Phelps v. Sheldon*, 13 Pick. 50. *Atwood v. Cobb*, 16 Pick. 227. In both cases the same extrinsic evidence must be resorted to, by the aid of which all uncertainty is removed. Where the words used are 'my estate' in a particular locality, oral evidence is necessary to show what estate the vendor did own. A latent ambiguity always exists where the party owns two parcels, to each of which the description used is equally applicable.

"In the present case the writing does not show that there is more than one house and lot on Amity Street. This fact was disclosed by the oral evidence at the trial; and the familiar rule would seem to apply, that parol evidence is admissible to explain and remove a latent ambiguity. If there had been only one house and lot on the street, there would have been no indefiniteness in the description. The supposed uncertainty having been created by parol, evidence of the same character may be resorted to for its removal. But, without relying much upon this consideration, we regard the fair construction of the words used to be, that they relate to a house and lot owned, at the time the memorandum was signed, by the parties who subscribed it. Thus interpreted, they are sufficiently certain, and the oral evidence is needed only to apply the description. This must be done by extrinsic evidence in every contract or conveyance, however minutely the boundaries of the estate may be set forth. The maxim, *id certum est quod certum reddi potest*, is the established rule of construction in suits for specific performance. The contract in the present case seems to us fairly within its application."

Then again in *Mead v. Parker*, 115 Mass. 413, the same Court held:

"In a written contract to convey real estate, the words 'a house on Church Street' are a sufficient description of the estate to satisfy the requirements of the statute of frauds; and the house may be identified by parol evidence." (Syllabus.) The Court said:

"The most specific and precise description of the property intended requires some parol proof to complete its identification. A more general description requires more. When all the circumstances of possession, ownership, situation of the parties, and of relation to each other and to the property, as they were when the negotiations took place and the writing was made, are disclosed, if the meaning and application of the writing, read in the light of those circumstances, are certain and plain, the parties will be bound by it as a sufficient written contract or memorandum of their agreement. That parol evidence is competent to furnish these means of interpreting and applying written agreements is settled by the uniform current of authorities. *Baker v. Hathaway*, 5 Allen 103; *Farwell v. Mather*, 10 Allen

322; Putnam *v.* Bond, 100 Mass. 58; Stoops *v.* Smith, 100 Mass. 63, and cases there cited; 1 Greenl. Ev., Pars. 286, 288."

In Scanlan *v.* Geddes, 112 Mass. 15, the same Court held:

"A written agreement to convey by a warranty deed, free from encumbrance, describing the estate to be conveyed simply as a house on a certain street, contains a sufficient description of the premises to be conveyed to satisfy the statute of frauds, provided the promisor owns one and but one house upon the street.

"Such an agreement is an agreement to convey the land upon which the house stands, and so much more land as is necessary to its beneficial enjoyment, and within the defendant's power to convey."

The decisions in other States sustaining the above views are too numerous to be set forth at length. In Lente *v.* Clark, Administratrix, 1 So. R. 149, the description "my 40 acres near the Garrison land in Hernando County" was held adequate (Florida).

In Cossitt *v.* Hobbs, 56 Ill. 231, the description "north-west quarter section 23, 160 acres, less R. R. \$300 per acre" was held adequate (Illinois).

There are, of course, cases sustaining contrary views (Am. & Eng. Encl., Vol. 29, 867), but the great weight of authority is in favor of the rules above stated; and the ideal method of interpretation is well described in Prof. Graves' paper on "Extrinsic Evidence in Respect to Written Instruments," as follows:

The judicial expositor, therefore, does not sit aloft on the cold height of an ideal perfection, and survey the written words with a severe and critical eye, careless whether the will fails or not; but after a very-human fashion, he seats himself in the armchair of the testator, puts on his spectacles, scrutinizes the will "by the four corners," reads its words by the light of all the surrounding facts and circumstances, corrects manifest errors, searches diligently for the faintest traces of intention—even receiving, in a proper case, evidence of the testator's extrinsic declarations; and so endeavors to construe the words of the will as the testator used them, bearing ever in mind that great maxim of the law which enjoins kindly, indulgent interpretation, that the will may prevail and not fail, *ut res magis valeat quam pereat.*

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